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April 1, 1996

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BY HAND

Mr. William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Closed Captioning and Video Description of Video Programming
MM Docket No. 95-176

Dear Mr. Caton:

Enclosed are an original and nine copies of the reply comments of Liberty Sports, Inc. in the above-referenced proceeding. Please distribute a copy to each of the Commissioners.

Very truly yours,

Robert Hoegle

Robert L. Hoegle

RLH:ssm
Enclosures

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

APR - 1 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

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MM Docket No. 95-176

Closed Captioning and Video

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Description of Video Programming

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REPLY COMMENTS OF LIBERTY SPORTS, INC.

Liberty Sports, Inc. submits these reply comments in response to the Commission's Notice of Inquiry in this proceeding, which the Commission now is using to implement Section 305 of the Telecommunications Act of 1996. Liberty Sports recognizes the importance of serving the hearing and visually impaired and responds to the Commission's request for comment on "the appropriate balance that should be struck between providing access to Americans with disabilities through closed captioning and video description and the costs and burdens imposed by mandatory requirements." Notice of Inquiry at ¶29.

Liberty Sports manages and/or has ownership interests in a number of regional sports networks which develop, produce, syndicate and distribute through multichannel video programming distributors sports programming of largely local and regional interest, as well as certain sports programming of national interest. The regional sports networks managed by Liberty Sports, including the region and number of subscribers for each, are identified on the annexed Exhibit A. In addition to the Prime Network backdrop feed for the regional sports networks, Liberty Sports has ownership interests in the NewSport, Prime Sports Showcase, and

Prime Deportiva national sports networks. Because of its extensive experience with regional sports programming and sports networks, Liberty Sports believes that it is well positioned to provide information regarding the unique problems posed by the closed captioning of sports programming, particularly for regional sports networks.

Both the Commission and Congress have recognized that, notwithstanding the public interest benefits of closed captioning, mandatory closed captioning is not suitable for all programming and all programming providers and distributors. Consequently, Congress authorized the Commission to exempt “programs, classes of programs, or services” for which mandatory closed captioning would be “economically burdensome.” See 47 U.S.C. §613(d)(1). The Conference Committee identified the following factors from the House Report for the Commission to consider in establishing such exemptions:

1. Nature and cost of providing closed captions;
2. Impact on the operations of the program provider, distributor, or owner;
3. Financial resources of the program provider, distributor, or owner and the financial impact of the program;
4. Cost of the captioning, considering the relative size of the market served or the audience share;
5. Cost of the captioning, considering whether the program is locally or regionally produced and distributed;
6. Non-profit status of the provider; and
7. Existence of alternative means of providing access to the hearing impaired, such as signing.

H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 183 (1996). Thus, the House Report identified “locally produced or regionally distributed” programming as an example of programming for which captioning may be “economically burdensome.” H.R. Rep. No. 204, 104th Cong., 1st

Sess. 114 (1995). Likewise, the Commission specifically questioned whether “locally or regionally produced programs” should be “categorically exempted” from captioning requirements. Notice of Inquiry at ¶29.

Because of the high cost of closed captioning live events, the limited existing capacity for such closed captioning, the inability to spread closed captioning costs among large numbers of subscribers or across multiple showings of a sporting event, and the visual nature of sporting events supplemented by widespread graphics, all broadcast commenters requested the Commission to exempt regional sports broadcasts from mandatory closed captioning requirements. Comments of CBS, Inc. at 31; Comments of Capital Cities/ABC, Inc. (“ABC”) at 13-14; Comments of National Broadcasting Company, Inc. (“NBC”) at 13-14; Comments of the National Association of Broadcasters (“NAB”) at 10-11; Comments of the Satellite Broadcasting and Communications Association (“SBCA”) at 9. Liberty Sports respectfully submits that, as set forth below, sports programming, particularly for regional programming services, clearly meets the criteria for a categorical exemption from closed captioning requirements -- particularly in view of the increasingly widespread use of supplemental graphics by regional sports networks.

High Cost And Limited Supply Of Live Closed Captioning Expertise

Live sports programming must be closed captioned live, which poses higher costs and more difficult logistical problems. Various commenters provided estimates for live captioning, ranging from \$175 to \$300 per hour for local events to \$300 to \$1,000 per hour for national events with corresponding differences in reliability and quality. CBS Comments at 28; ABC Comments at 10; see NBC Comments at 7; Comments of the National Captioning Institute

(“NCI”) at 5. Consequently, the cost of closed captioning would increase the production costs for sporting events, which are typically approximately \$15,000 to \$25,000 for professional events and lesser amounts for collegiate and local events on regional services, by amounts approaching 10 percent of the full production budgets. Such closed captioning costs would be prohibitive and are largely unnecessary because regional sports networks have continued to expand the graphic displays available to all viewers.

In addition to the high cost, the closed captioning of sports programming requires specialized steno-captioning skills which are in short supply.¹ Indeed, network commenters have concluded that there is “insufficient live-captioning capacity now to closed-caption the entire weekend regionalized sports schedules on the national broadcast networks.” ABC Comments at 6 n.9; see CBS Comments at 19; NBC Comments at 10-11. The availability of steno-captioning also varies from region to region so that “captioning services often do not exist in the regions where particular games” are produced, and encoding equipment may be unavailable at production sites. NBC Comments at 14. Likewise, there are significant disparities in the quality of service provided by local captioning services. ABC Comments at 10; CBS Comments at 19 (steno-captioning is “simply not available in many parts of the country”). The mandatory closed captioning of sports programming on the more than twenty regional sports networks would only exacerbate such shortages.

¹ As explained by NCI, steno-captioning “requires a different kind of training, which generally follows training as a court reporter.” NCI Comments at 5. Consequently, the supply of steno-captioning personnel is limited, and “significant amounts of on-line captioning services cannot normally be supplied on short notice.” Id. at 5-6. Apparently, a person already expert in court reporting must be trained for at least an additional six months to perform steno-captioning services. Id. at 6 n.10.

Inability To Spread Costs Among Viewers And Across Multiple Showings

The legislative history of Section 305 of the 1996 Telecommunications Act makes clear that Congress considered the benefits and burdens of closed captioning in the context of programming distributed nationally through multiple showings and media. Thus, the House Report recognizes the efficiencies and economies resulting from including closed captioning in programming when produced rather “than to have each delivery system or local broadcaster caption the program.” H.R. Rep. No. 204, 104th Cong., 1st Sess. 114 (1995). In contrast, regional programming services cannot achieve similar economies and efficiencies because their right to distribute sports programming is limited to particular geographic areas with fewer potential viewers and, as a practical matter, a single live showing of the sporting event with only very limited replay opportunities.

Typically, a regional sports network is licensed to provide its primary sports programming to a specific geographic area for which the local team or conference has distribution rights. Liberty Sports provides in Exhibit A the rough parameters of the regions for the networks it manages. In addition, for the larger regional sports networks, professional events may only be licensed for a portion of the network’s territory. Consequently, the number of available subscribers to a regional sports network is limited by definition. Again, as summarized in Exhibit A, the regional sports networks managed by Liberty Sports have between 500,000 and 4.5 million subscribers, which Liberty Sports believes is representative of the typical regional sports network.² Thus, in contrast to the national broadcast networks or well-established basic

² Although multiple regional networks may share secondary backdrop programming, such as rugby, soccer and volleyball games, coaches’ shows, anthologies, and similar programming, the audience shares of such programming are quite low. As recognized in the House Report, the “relative size” of the “audience share” is a relevant factor when determining

cable networks, a regional network has far fewer subscribers to bear the costs of closed-captioning.³

New or niche national cable programming services may have a similarly limited number of viewers. For example, although NewSport and Prime Sports Showcase are national services, at year end 1995, they had only 6,279,000 and 1,917,000 subscribers respectively. Prime Deportiva, a Spanish language sports service, had only 363,000 subscribers. Because such services have the same cost allocation problems as regional or local services, commenters have suggested that new or niche cable services also be considered for an exemption from the captioning requirements. Comments of the National Cable Television Association, Inc. ("NCTA") at 22.

At the same time, with rare exception, there is no "residual" market for sports programming. "Unlike feature films which have continuous audience appeal, sports events have substantial entertainment value only at the time of their occurrence." Regulations Pertaining to the Showing of Sports Events on Over-the-Air Subscription Television or by Cablecasting, 52 F.C.C.2d 1, 57 (1974), on recon., 54 F.C.C.2d 797 (1975), set aside on other grounds sub nom. Home Box Office, Inc. v. FCC., 567 F.2d 9 (D.C. Cir. 1977), cert. denied, 434 U.S. 829 (1977). In short, the license fees for and production costs (including closed captioning costs) of programming cannot be spread over multiple showings. See NCTA Comments at 11 ("the cost

whether closed captioning would be "economically burdensome." H.R. Conf. Rep. No. 458, 104th Cong. 2d Sess. 183 (1996).

³ As noted by ABC, viewership of fractionalized regional audiences is not sufficient to support the cost of closed captioning, which remains substantially the same regardless of the audience size. ABC Comments at 6. For example, ABC addresses the circumstance where its national audience might be segmented into 14 regions -- each of which is larger than the region covered by a typical regional sports service.

of captioning cannot be recouped through subsequent airings of certain live programs (such as sports...)”).

Thus, the cost of captioning sports programming constitutes a severe economic burden under the factors enumerated in the House Report, as set forth supra at 2. The programming typically is produced regionally and the size of the market served is limited by the controlling rights agreements, as well as interest from distributors and viewers, but the cost of the captioning is substantially the same as that incurred by national network and cable programmers. The inability of sports programmers to spread the captioning cost over multiple library showings only exacerbates such economic burden.

Graphics As An Alternative For Sports Programming

Because of the visual nature of sports and the already widespread use of graphics, commenters have observed that there is a far less compelling need for the closed captioning of sports programming:

By its nature television sports coverage gives even the hearing-impaired viewer most of the significant program content. Captioning is not essential to understand the progress of the game -- indeed, the experience would approximate attending the game live -- and conventional scoreboard and background graphics customarily supply much information that is given in the play-by-play.

ABC Comments at 14; NBC Comments at 14 (“sports event is essentially visual, and statistical information...is often indicated in graphics viewable by the entire audience”); SBCA Comments at 9 (“sporting events...with few exceptions are visually explanatory without the use of other aids”); CBS Comments at 31. Liberty Sports has included as Exhibit B examples of the graphics typically included in regional sports networks’ production of professional basketball, baseball

and hockey which confirm the wide variety of information visually displayed during the televised action.

Although clearly not a perfect substitute for closed captioning, such graphics do convey much of the important information that otherwise would be unavailable to the hearing impaired viewer. Again, the House Report identified the existence of such “alternative means of providing access to the hearing impaired” as a factor to consider in exempting programming from captioning requirements. Thus, NAB suggests that for sports telecasts stations “should be allowed to explore the use of other visual elements, such as on-screen ‘bugs’ containing scores and other information, as alternatives to full closed captioning.” NAB Comments at 10. As shown on the annexed Exhibit B, regional sports networks provide a variety of detailed information through on-screen graphics.

Video Description

Liberty Sports does not have experience with video description, which is a relatively new technique. However, it appears that video description would be particularly difficult for live sports programming, requiring exacting coordination between normal play-by-play/color-commentary audio and the video description. Further, as the Commission suggested in its Notice of Inquiry at ¶31, it is difficult to identify an added benefit for the visually impaired from video description when a “play-by-play commentary” is provided during the telecast of a sporting event. At this point, Liberty Sports believes that consideration of the substantive issues surrounding video description may be premature.

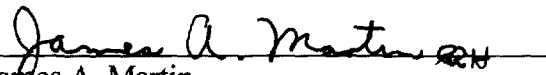
Conclusion

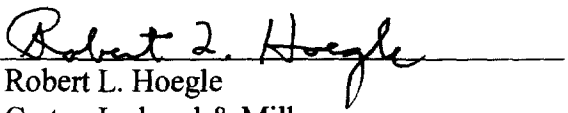
Liberty Sports recognizes the difficult task faced by the Commission in balancing the need for access by the hearing and visually impaired and the cost of such access upon all viewers. Because of the unique costs and problems associated with the captioning of sporting events, particularly for regional sports networks, Liberty Sports respectfully requests that the Commission exempt regional sports networks, as well as new and niche sports programming services, from mandatory closed captioning and acknowledge the utility of visual graphics for sports programming.

April 1, 1996

Respectfully submitted,

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REGIONAL SPORTS PROGRAMMING SERVICES MANAGED BY LIBERTY SPORTS*		
Regional Sports Network	Region**	Subscribers as of December 1995
Prime Sports-Intermountain West	Idaho, Nevada, Utah	559,000
Prime Sports-KBL	Pennsylvania, Ohio, West Virginia	2,310,000
Prime Sports-Midwest	Southern Illinois, Indiana, Missouri	670,000
Prime Sports-Northwest	Alaska, Idaho, Montana, Oregon, Washington	2,299,000
Prime Sports-Rocky Mountain	Colorado, Kansas, Nebraska, New Mexico, Wyoming	1,690,000
Prime Sports-Southwest	Arkansas, Louisiana, New Mexico, Oklahoma, Texas	4,509,000
Prime Sports-West	Arizona, Southern California, Hawaii, Nevada	4,560,000
Sunshine Network	Florida	3,582,000

* *Liberty Sports also has non-controlling ownership interests in and does not manage Home Team Sports, SportsChannel Chicago, SportsChannel Pacific, SportsChannel Philadelphia/PRISM, and SportSouth Network.*

** *The regions may include only a portion of the designated states. Consequently, different portions of the same state may be included in multiple regions.*

REGIONAL SPORTS ON-SCREEN GRAPHICS

PROFESSIONAL BASKETBALL

Score

- The score is displayed after most baskets; during and after time-outs; and before and after commercials. The scoreboard also includes the running game clock.

Player Information

- Periodically, when a player enters a game, that player is identified graphically with information that may include a biography, current statistics or a “hero” graphic (e.g. how they are performing in that game, performance in the last game or last five games, etc.). During free-throws, identification information usually is provided.

Fouls

- The player committing a foul typically is identified with information concerning the nature of the foul. Players who foul out of a game are identified.

Coaches

- Coaches generally are identified with their names and records. Additional information, such as past coaching positions and record versus particular opponents, typically is provided.

Additional Game Information

- Throughout the game, various statistical graphics are used to tell the story of the game, as well as the particular team’s standing in the league or division.
 - Game summaries are used during the game to update information, such as turnovers, field goal percentage, free-throw percentage, fouls and any pertinent information at the time of play.
 - Statistics are provided graphically at the end of each quarter (first quarter statistics, halftime statistics, third quarter statistics, and final statistics).

- When there is no scoreboard/clock displayed during play, an individual graphic may be displayed that highlights an important statistic at that point in the game (e.g. turnover comparison, three-point field goal percentage comparison, timeouts left for each team, team fouls, who to foul, etc.).
- Division standings are provided when it is relevant (e.g. two teams from the same division are playing each other for a critical playoff position).
- “Special” graphics are used under certain circumstances (e.g. if a player is at the free-throw line and it is a one-point game and the player has a high or low free-throw percentage).

Other Information

- Arenas are graphically identified with their names and locations.
- Teams as a whole are graphically identified with their records and vital team statistics throughout the game.

PROFESSIONAL HOCKEY

Goals

- Starting in the 1996-1997 season, there will be a regularly-displayed on-screen clock and score.
- When a goal is scored, the score generally will be displayed.
- After a goal is scored, the player who scored the goal generally is identified with information, such as number of career goals, number of goals in that game, time scored, who assisted and whether it was a power play goal.

Penalties

- When a penalty is called, it usually is graphically identified with a shot of who received the penalty and the length of penalty (e.g. two minutes for high-sticking).

Power Play

- During power plays, a power play graphic appears periodically that shows the current score, which team is in the power play, and the running clock counting down the penalty.

Player Information

- Periodically, when a player enters a game, that player is identified graphically with information that may include a biography, current statistics or a “hero” graphic (e.g. how the player is performing in that game, performance in the last game or last five games, performance in the previous meeting with a particular team, etc.).

Coaches

- Coaches generally are identified with their names and records. In addition, various information, such as past coaching positions and record versus particular opponents, typically is provided.

Additional Game Information

- Throughout the game, various statistical graphics are used to tell the story of the game, as well as the particular team’s standing in the league or division.
 - Scoring summaries are used between periods in conjunction with highlights of each goal to capsule each goal scored. The following information is graphically provided in the scoring summary: Time of the goal, who scored it, who assisted (if any), whether or not it was a power play goal.
 - Individual period statistics are summarized graphically at the end of each period (first period statistics, second period statistics, final statistics).
 - When there is no scoreboard/clock displayed during play, an individual graphic may be displayed that highlights an important statistic at that point in the game (e.g. penalty killing, face-offs, power plays, shots on goal, shots on power play, etc.).
 - Division standings are provided when relevant (e.g. two teams from the same division are playing each other for a critical playoff position).
 - “Special” graphics are used for various players under certain circumstances.

Other Information

- Arenas are graphically identified with their names and locations.
- Teams as a whole are graphically identified with their records and vital team statistics throughout the game.

PROFESSIONAL BASEBALL

Score

- Starting in the 1996-1997 season, there will be a regularly-displayed on-screen clock (inning) and score.

Ball and Strike Counts

- During at bats, the pitch count and outs are updated.

Player Information

- Periodically, when a player enters a game, that player is identified graphically with information that may include a biography, current average, updated game statistics, and season statistics.
- An updated box score generally is used after batter changes, updating hits, runs and errors.

Additional Game Information

- Throughout a game, various statistics are shown, including information about division standings, league leaders, playoff standings, etc.